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June 14, 1996

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JUN 14 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notification of Permitted Ex Parte Presentation
MM Docket No. 95-92

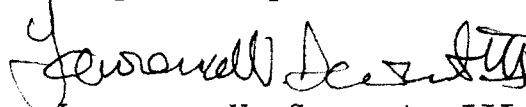
Dear Mr. Caton:

CBS Inc. (CBS), by its attorneys and pursuant to Sections 1.1206(a)(1)-(2) of the Commission's rules, hereby submits an original and two copies of this memorandum regarding a permitted oral ex parte presentation to Commission officials regarding MM Docket No. 95-92.

On the afternoon of June 11, 1996, the undersigned along with Richard E. Wiley of this firm and Mark Johnson of CBS, met with Jane Mago of the Office of Commissioner Chong. The discussion addressed CBS's network/affiliate agreements as described in the attached presentation and other issues raised in CBS's pleadings in the docket cited above.

Kindly direct any questions regarding this matter to the undersigned.

Respectfully submitted,


Lawrence W. Secrest, III

cc: Jane Mago

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**THE COMMISSION SHOULD MAKE CLEAR THAT THE
"RIGHT TO REJECT" RULE MAY NOT BE INVOKED BY NETWORK
AFFILIATES SOLELY ON THE BASIS OF ECONOMIC CONSIDERATIONS**

■ **As the Commission Repeatedly Has Recognized, the Television Networks Do Not Now Enjoy -- If in Fact They Ever Did -- an Undue Advantage in Bargaining Power with Respect to Network/Affiliate Relations.**

- The proliferation of alternative video programming sources, the emergence of three new national television networks, and the growth of larger and more powerful station groups have substantially strengthened affiliate leverage in dealing with CBS and the other established networks.
- In the New World/Fox deal, in one day, CBS lost VHF affiliates in major markets serving 10.85% of the U.S. TVHH (i.e., Cleveland, Detroit, Phoenix, Milwaukee, Dallas, Atlanta, Tampa, and Austin).
- In the network bidding war that followed, CBS was forced to make significant concessions to retain existing affiliates and replace those it had lost. To protect its distribution system, and ensure the continued availability of CBS programming to viewers nationwide, the network entered into costly long-term affiliation arrangements with station owners, including a number of powerful group owners.
- ABC and NBC were forced to seek similar arrangements. The series of affiliation realignments caused by the New World/Fox transaction alone will reportedly cost the three original networks over \$200 million in increased affiliate compensation payments.

■ **CBS Supports Retention of a Right to Reject Rule That Guarantees Affiliates the Discretion to Refuse Programs Based on Public Interest Considerations, But Leaves the Appropriate Level of Economically-Based Preemptions to the Marketplace.**

- CBS has no objection to retention of a rule that preserves for affiliates the right to reject programs the station genuinely considers to be unsatisfactory, unsuitable, or contrary to the public interest and to substitute non-entertainment programs of greater local or national importance.
- CBS's existing affiliation agreements accord affiliates those rights. Further, CBS typically negotiates with its affiliates concerning an additional "basket" of a specified number of hours of discretionary preemptions -- often without compensation penalty -- based on individual station and market considerations.

- CBS seeks to preserve for networks only the right that syndicators, cable networks and other program suppliers now enjoy, to bargain with stations concerning program clearance, free of unnecessary governmental constraints.
- **Neither the FCC'S Existing Rules Nor any Legitimate Public Interest Concern Requires That Affiliates Be Permitted to Preempt Network Programming for Self-interested Economic Reasons.**
 - In entering into a network affiliation agreement, the affiliate makes a determination that the network's programming, generally, will serve the interests of the station's audience.
 - The existing right to reject rule, as applied in established practice in network-affiliate relationships, fully preserves the licensee's discretion to make reasonable preemptions based upon public interest concerns.
 - The claim that the proposed clarification of the right to reject rule would be "unworkable" is a red herring. The legitimate categories for preemption -- news and public affairs programming, charitable telethons, paid political broadcasts, and sustaining programs -- are clear cut. Sports programming and other entertainment programs, which CBS believes should be outside the scope of the right to reject rule, are no less susceptible to clear advance definition.
- **Television Operators Voluntarily Choosing Affiliated Status Should Not Be Given FCC Sanction To Extract Additional Profits from the Network-Affiliate Relationship Through Economically-Motivated Preemptions of Network Programs They Have Contracted To Carry.**
 - As the Commission recognized in its NPRM, allowing affiliates unbridled discretion to "cherry pick" programming would compromise the ability of the networks to continue to provide high quality, innovative programming, as they would be unable to assure advertisers of the delivery of the full national network audience, and would unfairly deprive the networks of the benefit of the bargains they struck in arms-length negotiations.
 - An interpretation of the right to reject rule which would preclude networks from bargaining with their affiliates to limit economically-based preemptions would serve no public interest, but would simply allow affiliates to enjoy greater financial benefits from the network-affiliate relationship than they otherwise could negotiate -- a result which clearly should not be dictated by government regulation.